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Attorneys for Defendants
NATIONAL INVESTMENT CONSULTANTS, INC.,
And WEI M. TSE a.k.a. RAYMOND TSE, and for
Relief Defendant THERESA C. WONG,

**UNITED STATES DISTRICT COURT
NORTHERN DIVISION OF CALIFORNIA
SAN FRANCISCO DIVISION**

U.S. COMMODITY FUTURES TRADING
COMMISSION and THE COMMISSIONER OF
CORPORATIONS OF THE STATE OF
CALIFORNIA,

Plaintiffs,

vs.

NATIONAL INVESTMENT CONSULTANTS,
INC, a California corporation, PACIFIC BEST
GROUP LTD, a.k.a. PACIFIC BEST
COMPANY LTD, a British Virgin Islands
Corporation, YI KERRY XU, an individual,
RUN PING ZHOU a.k.a. FLORA ZHOU, an
individual, and WEI M. TSE a.k.a. RAYMOND
TSE, an individual,

Defendants,

CASE NO.: 052641 JSW

Assigned to Hon. Jeffrey S. White

**NOTICE OF MOTION AND MOTION
FOR ORDER ALLOWING
WITHDRAWAL OF COUNSEL OF
RECORD FOR DEFENDANT PACIFIC
BEST GROUP LTD., a.k.a. PACIFIC
BEST COMPANY LTD.;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[FILED CONCURRENTLY WITH
SUPPORTING DECLARATION]

1 and
2 THERESA C. WONG, an individual,
3 Relief Defendant.

**IF NO OPPOSITION IS FILED,
THELEN REID & PRIEST LLP
REQUESTS THAT THE COURT
RULE WITHOUT ORAL
ARGUMENT**

Date: May 12, 2006

Time: 9:00 a.m.

Dept.: 2

Complaint filed: June 28, 2005

Trial Date: October 30, 2006

9 TO EACH PARTY AND EACH ATTORNEY OF RECORD IN THIS ACTION:

10 PLEASE TAKE NOTICE THAT on May 12, 2006, at 9:00 a.m. in the above captioned
11 court, located at 450 Golden Gate Avenue, San Francisco, California, Edward Gartenberg, Robert
12 Weikert and Alexandra Epand will and hereby do move for this Court to order relieving them and
13 their firm of Thelen Reid & Priest LLP (collectively "Thelen Reid") as attorneys of record for
14 Defendant Pacific Best Group Ltd., a.k.a. Pacific Best Company Ltd., a British Virgin Islands
15 Corporation ("Pacific Best").

16 The grounds for the motion are that: (1) an actual conflict has arisen between Pacific Best
17 and defendant Wei Man Tse a.k.a. Raymond Tse, and (2) Pacific Best has failed to cooperate
18 with counsel and has made it unreasonably difficult for counsel to proceed.

19 Subject to the limitations imposed by attorney-client privilege, the factual basis for the
20 grounds for this motion are all set forth in the Declaration of Edward Gartenberg, which is served
21 with this motion.

22 **Pacific Best is also hereby notified as follows:**

23 Pacific Best is not permitted to appear *pro se* (without an attorney) before the Court in this
24 matter. (Northern District Local Rule § 3-9(b).) If Thelen Reid's motion is granted by the Court,
25 failure to obtain new counsel to represent Pacific Best **may result in Pacific Best's default being**
26 **entered and judgment being rendered against it.**

27 The client, Pacific Best, is being served with this motion in the best possible manner by
28

1 mail and facsimile service to Pacific Best's last known address and facsimile number. Thelen
2 Reid has communicated with Pacific Best at this facsimile number as recently as earlier this
3 month. If this motion is granted, Pacific Best may be served with notices and papers at: fax
4 number **011-852-2370-8307** and P.O. Box 9321, Taipa, Macau.


5 This motion is based on the pleadings and papers on file in this action, the attached Notice
6 of Motion, the accompanying Memorandum of Points and Authorities, the declaration of Edward
7 Gartenberg and whatever evidence and argument is presented at the hearing of this motion.

8 If no opposition is filed, Thelen Reid requests that the Court rule without oral argument. A
9 proposed order is filed herewith.

10
11 Dated: March 28, 2006

THELEN REID & PRIEST LLP

12
13 By


EDWARD GARTENBERG
ALEXANDRA EPAND
ROBERT A. WEIKERT

14
15 Attorneys for Defendants
16 NATIONAL INVESTMENT CONSULTANTS,
17 INC.; WEI M. TSE a.k.a. RAYMOND TSE, and for
18 Relief Defendant THERESA C. WONG
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Good cause exists to allow Thelen Reid & Priest LLP (“Thelen Reid”) to withdraw as counsel of record for defendant Pacific Best Group Ltd., a.k.a. Pacific Best Company Ltd., a British Virgin Islands Corporation (“Pacific Best”), because an actual conflict has arisen between Pacific Best and defendant Wei Man Tse a.k.a. Raymond Tse (“Tse”) and Thelen Reid cannot continue to represent Pacific Best in this action. Further, Pacific Best has failed to cooperate with an essential aspect of the attorney-client relationship.

II. GOOD CAUSE EXISTS TO ALLOW THELEN, REID & PRIEST TO WITHDRAW AS COUNSEL OF RECORD FOR PACIFIC BEST

California Rules of Professional Conduct (“CRPC”), Rule 3-700(B)(2) prohibits an attorney from continuing to represent multiple clients in a matter where such representation would result in violation of the Rules of Professional Conduct. CRPC Rule 3-310(C)(1) further prohibits an attorney from concurrently representing, without the written consent of each client, multiple clients in a matter in which their interests potentially conflict. Northern District Local Rule 11-5 permits withdrawal by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case. Such notice is being provided here. (N.D. L.R. 11-5(a).)

The California Rules of Professional Conduct and the ABA Code of Professional Responsibility also permit an attorney appearing as counsel of record for a party to withdraw from the representation where a client’s conduct makes it “unreasonably difficult for the attorney to carry out the employment effectively.” (Rules Prof. Conduct, rule 3-700(C)(1)(d); ABA Code of Professional Responsibility Rules 2-110(C)(1)(d) and (f); see also *Model Rules of Professional Conduct* 1.16(b) (4), (5), (6).)

In most cases, the determination whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the trial court (*Manfredi & Levine v. Superior Court*(1968) 66 Cal.App.4th 1128, 1133), and an attorney should usually be permitted to withdraw. (*People v.*

1 *Prince* (1968) 268 Cal.App.2d 398, 406-407.) Where there is a conflict, the lawyer *must*
 2 withdraw. (Rule Prof. Conduct, rule 3-700(B)(2) and 3-310(C).

3 **A. A Conflict Has Arisen Between Pacific Best And Defendant Wei Man Tse**
 4 **A.K.A Raymond Tse.**

5 There is no agreement between Thelen Reid and Pacific Best, nor an agreement between all
 6 defendants, that would waive the current conflict of interest between Pacific Best and Mr. Tse, and
 7 that would provide that Thelen Reid is to act as counsel of record for all defendants. As stated in
 8 the Declaration of Edward Gartenberg, an actual conflict between Pacific Best and Mr. Tse has
 9 arisen and Thelen Reid cannot continue to represent both. Gartenberg Decl., ¶ 4. *California Rule*
 10 *of Prof. Conduct* Rule 3-700(B)(2) and 3-310(C)(1) provides that a lawyer *must* withdraw when
 11 there is a conflict of interest.

12 **B. Pacific Best Has Failed To Cooperate With An Essential Aspect Of The**
 13 **Attorney-Client Relationship.**

14 In this case, Thelen Reid should also be permitted to withdraw because despite Thelen
 15 Reid's best efforts, Pacific Best has failed to provide certain cooperation which has made it
 16 unreasonably difficult for Thelen Reid to continue its representation of Pacific Best. (See, *Statue*
 17 *of Liberty-Ellis Island Foundation, Inc. v. Intl. United Industries, Inc* (S.D.N.Y. 1986) 110 F.R.D.
 18 395, 397 (firm permitted to withdraw where client had not cooperated with the firm or paid for it
 19 services); *Solomon v. Solomon* (N.Y. App. 1991) 172 A.D.2d 1081, 1082 (counsel permitted to
 20 withdraw where client failed to comply with request to complete necessary forms.)

21 Upon good cause shown and notice to the client, an attorney may withdraw by obtaining
 22 leave of the Court. (N.D. L. R. 11-5(a).) A client's failure to cooperate with an essential aspect of
 23 the attorney-client relationship constitutes good cause for an attorney to withdraw. (See
 24 *International Business Advisors, Ltd. v. Payless Drugstores Northwest, Inc.* 27 U.S.P.Q.2d 1053,
 25 1054 (N.D. Cal. 1993).) The court in the case of *Liberty-Ellis Island Foundation, Inc. v.*
 26 *International United Industries, Inc.*, 110 F.R.D. 395 (S.D.N.Y. 1986), granted the motion of
 27 counsel to be relieved on the grounds that the client had failed to cooperate with counsel.
 28

1 In the present matter, Pacific Best has failed to cooperate with regard to an essential aspect
2 of the attorney-client relationship.

3 **C. Pacific Best Has Ample Opportunity To Locate New Counsel Sufficiently In**
4 **Advance Of Trial.**

5 No prejudice to Pacific Best will arise if Pacific Best is required to find new counsel at this
6 stage.

7 First, Pacific Best has time to obtain separate counsel who can represent them in this
8 matter.

9 Second, there is no discovery pending directed to Pacific Best, nor are there pending
10 motions. Gartenberg Decl., ¶ 8.

11 Third, discovery will not close until June 30, 2006, and the case is not scheduled to
12 proceed to trial until October 30, 2006.

13 Fourth, well in advance of this motion, counsel has also provided Pacific Best with notice
14 that, absent a substitution of counsel, Thelen Reid would move to terminate its representation.
15 Pacific Best has been advised that, as a corporate entity, it must hire a new attorney immediately
16 because corporations may not appear *pro se* in federal court.¹ Pacific Best has further been
17 advised that, unless it locates new counsel, it could be subject to default or other liabilities.
18 Gartenberg Decl., ¶ 6. In addition, this Motion serves as notice to all other parties who have
19 appeared in this action as required by Local Rule 11-5.

20 Consequently, Pacific Best is aware of the necessity of obtaining new counsel and there is
21 ample time for Pacific Best to locate new counsel to represent it in this matter. Thus, Pacific Best
22 will not be prejudiced by the withdrawal of Thelen Reid as counsel of record.

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26 ¹ The ban on corporate self-representation does not prevent the court from granting an attorney's
27 motion to withdraw as counsel of record, *even where the corporation would be left without*
28 *representation* as a result. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284, 111
Cal.Rptr.2d 439, 444, fn. 5.)


1 **III. CONCLUSION**

2 Based on the foregoing, Thelen Reid respectfully requests that it be relieved as counsel of
3 record for Pacific Best in this matter.

4
5 Dated: March 28, 2006

THELEN REID & PRIEST LLP

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7 By


EDWARD GARTENBERG

ALEXANDRA EPAND

ROBERT A. WEIKERT

Attorneys for Defendants

NATIONAL INVESTMENT CONSULTANTS,

INC.; WEI M. TSE a.k.a. RAYMOND TSE, and for

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